

2011-11

**JEROME H.
GROSSMAN**

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ATTORNEY AT LAW

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May 4, 2011

To: City of Rochester
Planning and Development Department

From: Jerome H. Grossman

Re: Appeal of Administrative Decision

Enclosed is the City's Application for the Appeal, the administrative decision appealed from, a narrative and an abutters list

The City requests that the application fee be waived.

Very truly yours,



Jerome H. Grossman

bsw
enclosures

RECEIVED

MAY - 4 2011

Planning Dept.

APPLICATION FOR APPEAL
TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. _____

DATE FILED _____

ZONING BOARD CLERK _____

Phone No 332-3678

Name of applicant City of Rochester (School Dept)

Address 150 Wakefield Street, Rochester, NH 03867

Owner of property concerned Same
(if the same as applicant, write "same")

Address Same
(if the same as applicant, write "same")

Location of property 130 Wakefield Street

Map No. 113+116 Lot No. 17 Zone R2

Description of property N/A
(give length of lot lines frontage side rear lines)

Proposed use or existing use affected Food Service Classroom Exhaust Fan

APPEAL OF AN ADMINISTRATIVE DECISION

The undersigned alleges that an error has been made in the decision determination or requirement

of Thomas R. Abbott on 4/15/11
name of enforcement officer date

to City of Rochester School District in relation to Article See Attached Letter

From Code Enforcement Director
Section _____ of the _____ and hereby appeals said decision.

Signed _____

(Applicant)

RECEIVED

THE STATE OF NEW HAMPSHIRE

CITY OF ROCHESTER

ZONING BOARD OF ADJUSTMENT

APPEAL OF ADMINISTRATIVE DECISION

NOW COMES THE CITY OF ROCHESTER (Rochester School Department) and in support of its appeal of Administrative Decision states briefly as follows:

1. In the summer of 2009 renovations were made to the food service classroom area as part of alterations to the Richard Creteau Regional Technology Center.
2. All renovations were made pursuant to detailed plans drawn by Architect Frank Marinace and approved by the Rochester Code Enforcement Office.
3. As part of the renovation project the food service area exhaust fan was relocated to the Technology Center rooftop.
4. Upon completion of the renovation project, the new code enforcement director pointed out that an access walkway was required to allow service to the fan.
5. While access walkways are required by New Hampshire Mechanical Codes when fans are more than 16' above grade level, engineers and architects employed by Frank Marinace Architects have indicated that other New Hampshire jurisdictions allow access to such fans by bucket lifts as an acceptable alternative to permanently constructed ladders and catwalks.
6. Such access to replace a motor or other mechanical part on an infrequent basis, perhaps every 5 years, would be sufficient by using a bucket lift.
7. The City of Rochester's insurance carrier has indicated that use of a bucket lift would be acceptable for the City's insurance liability in such situations without the need for permanent structures.
8. To require the construction of permanently installed ladders and catwalks would require re-engineering and cost between \$30,000.00 to \$50,000.00. It would also void the existing roof warranty.
9. It is equally good or if not better, especially in winter conditions, to access the fan by use of a bucket lift when required.

10. It would be appropriate to vary the application of the code in this situation. To not allow the variation would be manifestly unjust and be contrary to the spirit and purpose of both the Code and public interest.

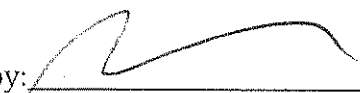
It is therefore requested as follows:

- A. That the Board allow access to the exhaust fan to be by bucket lift as a reasonable alternative to permanently installing ladders and catwalks.

Respectfully Submitted

City of Rochester
Rochester School Department

by:



Jerome H. Grossman, Its Attorney



City of Rochester, New Hampshire

DEPARTMENT OF CODE ENFORCEMENT
31 Wakefield Street • Rochester, NH 03867
(603) 332-3508 • Fax (603) 332-8601

April 15, 2011

Richard Bickford, Facilities Director
Rochester School District
150 Wakefield Street
Rochester, NH 03867

RE: Food Service Classroom Building Code Interpretation

Dear Richard,

This letter is in response to your request for a formal interpretation relative to the matter of the final inspection(s) of the Spaulding High School, Food Service Classroom situate at 130 Wakefield Street. As I understand your request, you are seeking a formal interpretation on the following matters.

1. Whether the exhaust fan located on the sloped roof area and serving the new Spaulding High School, Food Service Classroom will require access, a service platform and guards.
2. Whether a telescoping lift could serve as the required access and service platform for the exhaust fan in question.

Before proceeding to address these issues, I feel it appropriate to set forth the historical backdrop against which I have attempted to address your request for a formal interpretation.

Based upon information available relative to the Food Service Classroom project, it appears that the building permit application submitted on June 24, 2009 was approved on July 21, 2009 by former Code Enforcement Director, Larry Hamer. Based upon this July 21, 2009 approval date, this project would be required to comply with all requirements of the 2006 International Building Codes as adopted and amended by the State of New Hampshire pursuant to RSA 155-A. The plans upon which said approval was based contained the stamp(s) of Registered Architect, Frank P. Marinace and Professional Engineers, Douglass R. McGin and Victor B. Reno. Inspections were conducted on the Food Service Classroom between July 16, 2009 (prior to permit approval) and October 18, 2010. Final inspections of the Food Service Classroom were first scheduled for September 29, 2009, at this point the installation of the commercial hood system and associated exhaust fan had been completed. It was during the September 29, 2009 final inspection that the lack of access, as required under the New Hampshire State Building Code, was brought to the attention of former Facilities Director, Dick Kalisz.

Chapter 2, Section 202 of the 2006 International Mechanical Code is entitled "General Definitions" and defines the word "Equipment" as follows:

All piping, ducts, vents, control devices and other components of systems other than appliances which are permanently installed and integrated to provide control of environmental conditions for buildings. This definition shall also include other systems regulated by this code".

Chapter 5, Section 506, subparagraph 506.1 of the 2006 International Building Code is entitled "General" and provides as follows:

Commercial kitchen hood ventilation ducts and exhaust equipment shall comply with the requirements of this section. Commercial kitchen grease ducts shall be designed for the type of cooking appliance and hood served".

Chapter 5, Section 506, subparagraph 506.5 of the 2006 International Building Code is entitled "Exhaust Equipment" and provides as follows:

Exhaust equipment, including fans and grease reservoirs, shall comply with Sections 506.5.1 through 506.5.5 and shall be of an approved design or shall be *listed* for the application".

The above referenced provisions make clear that it is the intent of the 2006 International Mechanical Code to regulate commercial kitchen hood ventilation ducts and exhaust fan(s) as equipment.

Chapter 5, Section 506, subparagraph 506.5.3 of the 2006 International Building Code is entitled "Exhaust Fan Mounting" and provides as follows:

An upblast fan shall be hinged and supplied with a flexible weatherproof electrical cable to permit inspection and cleaning. The ductwork shall extend a minimum of 18 inches (457 mm) above the roof surface".

This provision addresses the difficulty that would be associated with lifting the fan from the roof curb ***while performing routine or scheduled maintenance or inspection of the exhaust fan.***

Chapter 3, Section 308, subparagraph 308.5 of the 2006 International Building Code is entitled "Equipment and Appliances On Roofs or Elevated Structures" and provides as follows:

Where equipment requiring access and appliances are installed on roofs or elevated structures at a height exceeding 16 feet (4877 mm), **such access shall be provided by a permanent approved means of access,** the extent of which shall be from grade or floor level to the equipment and appliances' level service space. Such access shall not require climbing over obstructions greater than 30 inches (762 mm) high or walking on roofs having a slope greater than four units vertical in 12 units horizontal (33-

percent slope). Where access involves climbing over parapet walls, the height shall be measured to the top of the parapet wall. [Emphasis added]

Permanent ladders installed to provide the required access shall comply with the following minimum design criteria:

1. The side railing shall extend above the parapet or roof edge not less than 30 inches (762 mm).
2. Ladders shall have rung spacing not to exceed 14 inches (356 mm) on center.
3. Ladders shall have a toe spacing not less than 6 inches (152 mm) deep.
4. There shall be a minimum of 18 inches (457 mm) between rails.
5. Rungs shall have a minimum 0.75-inch (19 mm) diameter and be capable of withstanding a 300-pound (136.1 kg) load.
6. Ladders over 30 feet (9144 mm) in height shall be provided with offset sections and landings capable of withstanding 100 pounds per square foot (488.2 kg/m²). Landing dimensions shall be not less than 18 inches (457 mm) and not less than the width of the ladder served. A guard rail shall be provided on all open sides of the landing.
7. Ladders shall be protected against corrosion by *approved* means.

Catwalks installed to provide the required access shall be not less than 24 inches (610 mm) wide and shall have railings as required for service platforms.

Exception: This section shall not apply to Group R-3 occupancies.

Chapter 3, Section 308, subparagraph 308.5.1 of the 2006 International Building Code is entitled "Sloped Roofs" and provides as follows:

Where appliances, equipment, fans or other components that require service are installed on a roof having a slope of three units vertical in 12 units horizontal (25-percent slope) or greater and having an edge more than 30 inches (762 mm) above grade at such edge, a level platform shall be provided on each side of the appliance or equipment to which access is required for service, repair or maintenance. The platform shall be not less than 30 inches (762 mm) in any dimension and shall be provided with guards. The guards shall extend not less than 42 inches (1067 mm) above the platform, shall be constructed so as to prevent the passage of a 21-inch diameter (533 mm) sphere and shall comply with the loading requirements for guards specified in the *International Building Code*. Access shall not require walking on roofs having a slope greater than four units vertical in 12 units horizontal (33-percent slope). Where access involves obstructions greater than 30 inches (762 mm) in height, such obstructions shall

be provided with ladders installed in accordance with Section 306.5 or stairs installed in accordance with the requirements specified in the *International Building Code* in the path of travel to and from appliances, fans or *equipment* requiring service. [Emphasis added]

The above referenced provisions clearly require equipment located on roofs or structures exceeding a height of 16 feet be provided with a permanently installed means of access as well as a work platform not less than 30 inches in any dimension.

Given the factual information above regarding the requirements for roof mounted mechanical equipment regulated under the provisions of the 2006 International Mechanical Code, in my capacity as the Building Official for the City of Rochester, I hereby rule that both permanent access to and a permanent platform on each side of said equipment to which access is required for service, repair or maintenance.

The 2006 International Building Code and the New Hampshire Revised Statutes Annotated provide you with a means to appeal this decision to the City of Rochester Building Code Board of Review.

Chapter 1, Section 112, subparagraph 112.1 of the 2006 International Building Code is entitled "Board of appeals, General" and provides as follows:

In order to hear and decide appeals of orders, decisions or determinations made by the *building official* relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

Chapter 1, Section 112, subparagraph 112.2 of the 2006 International Building Code is entitled "Board of appeals, General" and provides as follows:

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code. [Emphasis added]

RSA 674:34 is entitled "Powers of Building Code Board of Appeals" and provides as follows:

The building code board of appeals shall have the power, upon an appeal filed with it by any person aggrieved by a decision of the building inspector dealing with the building code, to vary the application of any provision of the building code to any particular case when, in its opinion, the enforcement of the building code would do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

Unofficial Property Record Card - Rochester, NH

General Property Data

Parcel ID 0113-0017-0000	Account Number 1649
Prior Parcel ID --	Property Location 130 WAKEFIELD ST
Property Owner CITY OF ROCHESTER	Property Use CITY OF ROCH
Mailing Address 31 WAKEFIELD ST	Most Recent Sale Date 4/2/1990
City ROCHESTER	Legal Reference 1500-317
Mailing State NH Zip 03867-1916	Grantor
Parcel Zoning R2	Sale Price 0
	Land Area 37.000 acres

Current Property Assessment

Card 1 Value	Building Value 0	Yard Items Value 32,877,700	Land Value 163,000	Total Value 33,040,700
Total Parcel Value	Building Value 0	Xtra Features Value 32,877,700	Land Value 163,000	Total Value 33,040,700

Building Description

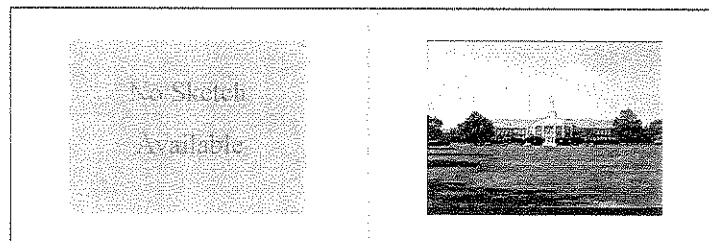
Building Style N/A	Foundation Type N/A	Flooring Type N/A
# of Living Units N/A	Frame Type N/A	Basement Floor N/A
Year Built N/A	Roof Structure N/A	Heating Type N/A
Building Grade N/A	Roof Cover N/A	Heating Fuel N/A
Building Condition N/A	Siding N/A	Air Conditioning 0%
Finished Area (SF) N/A	Interior Walls N/A	# of Bsmr Garages 0
Number Rooms 0	# of Bedrooms 0	# of Full Baths 0
# of 3/4 Baths 0	# of 1/2 Baths 0	# of Other Fixtures 0

Legal Description

Narrative Description of Property

This property contains 37.000 acres of land mainly classified as CITY OF ROCH with a(n) N/A style building, built about N/A, having N/A exterior and N/A roof cover, with N/A unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 0 half bath(s).

Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

ABUTTER LIST

City of Rochester, NH
Please Print or Type

Applicant: CITY OF ROCHESTER - JCHAL DEPT Phone 332-3676

Project Address: 120 WAKEFIELD ST

List the names and addresses of all parties below. For abutting lot owners, list each owner whose lot adjoins or is directly across the street or a body of water from the subject property. This form may not be completed more than five (5) days prior to the application deadline.

LEGAL OWNER OF SUBJECT LOT

Map	Lot	Zone	Owner Name	Mailing Address
113	17	R2	CITY OF ROCHESTER	150 WAKEFIELD ST.

ABUTTING LOT OWNERS

Map	Lot	Owner Name	Owner Mailing Address (NOT property location)
113	57	ERVIN & KATHLEEN FAZEKAS	141 WAKEFIELD ST ROCHESTER
113	56	SCOTT & JENNIFER PATTERSON	156 WINKLEY FARM LANE ROCHESTER
113	54	FREDERICK T. HUNTER	149 WAKEFIELD ST ROCHESTER
113	53	RICHARD & VIOLET BOYLE	1369 BOYLARD RD SAN JOSE CA 95128
113	52	DONNA & ROBERT AMOS	153 WAKEFIELD ST ROCHESTER
113	51	JOSEPH & CARLENE HUTCHINS	155 WAKEFIELD ST ROCHESTER
113	50	ROGER & JANET TREMBLAY	157 WAKEFIELD ST ROCHESTER
113	49	MCDONALDS CORP	P.O. Box 6300 AMHERST NH 03031
113	48	BUBBLES INCORPORATED	141 WAKEFIELD ST ROCHESTER
113	47	DAVID FISHER	187 WAKEFIELD ST ROCHESTER

PROFESSIONALS AND EASEMENT HOLDERS. Engineers, Surveyors, Soil Scientists, and Architects whose seal appears or will appear on the plans (other than any agent submitting this application); holders of conservation, preservation, or agricultural easements; and upstream dam owners/NHDES.

Name of Professional or Easement Holder	Mailing Address

I, the undersigned, acknowledge that it is the responsibility of the applicant or his/her agent to fill out this form and mail certified notices to abutters and other parties in a complete, accurate, and timely manner, in accordance with applicable law. I understand that any error or omission could affect the validity of any approval. The names and address listed on this form were obtained from the City of Rochester Assessing Office computer - Assess Pro (located in the Revenue Bldg at 19 Wakefield Street)

on this date: 5/4/11, This is page 1 of 3 pages.

Applicant or Agent: [Signature]

Staff Verification: _____

ABUTTER LIST

City of Rochester, NH

Please Print or Type

Applicant: _____ Phone _____

Project Address: _____

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LEGAL OWNER OF SUBJECT LOT

Map	Lot	Zone	Owner Name	Mailing Address

ABUTTING LOT OWNERS

Map	Lot	Owner Name	Owner Mailing Address (NOT property location)
113	21	CITY OF ROCHESTER	31 WAKEFIELD ST ROCHESTER
113	38	PUBLIC SERVICE CO	PO BOX 3430 MANCHESTER, NH 03105
113	37	TRISTATE REALTY / DIFRUSCIO ^{CITRONE}	17 WEST ST HAVERHILL MA 01830
113	23	CITY OF ROCHESTER	31 WAKEFIELD ST ROCHESTER
113	22	"	"
113	36	ALFRED & JUDY PHILBRICK	3 PINK ST ROCHESTER
113	18	CITY OF ROCHESTER	31 WAKEFIELD ST ROCHESTER
116	173	"	"
116	175	"	"
116	174	"	"

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on this date: 7/11, This is page 2 of 3 pages.

Applicant or Agent: [Signature]

Staff Verification: _____

ABUTTER LIST

City of Rochester, NH

Please Print or Type

Applicant: _____ Phone _____

Project Address: _____

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LEGAL OWNER OF SUBJECT LOT

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ABUTTING LOT OWNERS

Map	Lot	Owner Name	Owner Mailing Address (NOT property location)
116	176	PIGOS COURT COND ASSOC.	139 WAKEFIELD ST ROCHESTER
116	177	DUNG & CAN DUONG	137 WAKEFIELD ST ROCHESTER
116	178	GABRIELLE MADEAU	98 LOWELL ST ROCHESTER
116	179	FLORENCE & MARILYN KEEFE	129 WAKEFIELD ST ROCHESTER
116	180	LARRY CICCOTELLI	19 TINGLEY ST ROCHESTER
116	181	ALLEN FAMILY TRUST	26333 NADIR RD APT 101 PUNTA GORDA FL 3398
116	182	PATRICK REDMOND	441 FIRSTCROWN PT. RD STRAFFORD NH 03584
116	171	DAVID & MICHAEL ALBERT	P.O. Box 105 KITTERYME, ME 03904
216	31	STATE OF NH DOT	1 HAZEN DR. CONCORD NH 03301

PROFESSIONALS AND EASEMENT HOLDERS. Engineers, Surveyors, Soil Scientists, and Architects whose seal appears or will appear on the plans (other than any agent submitting this application); holders of conservation, preservation, or agricultural easements; and upstream dam owners/NHDES.

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